



Information **UPDATE**

Wisconsin Department of Public Instruction/John T. Benson, State Superintendent/125 S. Webster St./P.O. Box 7841/ Madison, WI 53707-7841

BULLETIN NO. 00.10

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TO: District Administrators, CESA Administrators, CCDEB Administrators,
Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Michael J. Thompson, Assistant Superintendent
Division for Learning Support: Equity and Advocacy

SUBJECT: Transfer Pupils with Disabilities

The Department of Public Instruction has repealed and recreated § PI 11.07, Wis. Admin. Code, Transfer Pupils. The rule was revised to clarify that there can be no interruption in special education services for a child with a disability who transfers between Wisconsin local educational agencies. Also the rule was revised to simplify the process when a local educational agency receives a transfer pupil with a disability from outside Wisconsin. The new rule clarifies the process in such a situation and permits a local educational agency to adopt the evaluation report and individualized education program (IEP) of a transfer pupil from outside the state.

This bulletin addresses frequently asked questions about children with disabilities who transfer from an out-of-state local educational agency, those who transfer from another Wisconsin agency, and those who move within a Wisconsin local educational agency. Please note that the Wisconsin statutes define a "local educational agency" to include a school district; the Wisconsin Department of Health and Family Services if the child with a disability resides in a facility operated by that department; or the Wisconsin Department of Corrections if the child with a disability resides in a Type 1 secured correctional facility or a Type 1 prison.

1. When a local educational agency receives a transfer pupil with a disability from another Wisconsin local educational agency, what general rules apply?

The receiving local educational agency must ensure that there is no interruption in the pupil's special education and related services. The receiving agency must implement the IEP from the sending agency until the receiving agency either formally adopts the sending agency's IEP, or it develops its own IEP. If the receiving agency cannot implement all of the sending agency's IEP, the receiving agency must provide services that approximate the IEP as closely as possible. In such a case, an IEP meeting should be conducted within a short time after the pupil enrolls (normally within one week).

If the receiving agency has not received the pupil's education records, the agency must request in writing the pupil's education records from the sending agency. The sending agency must send the records within 5 working days of receipt of the written request. The sending agency is not required to obtain parental consent to send the records. The sending agency may not withhold the pupil's education records from the receiving agency for any reason.

2. What action is required with regard to the evaluation and eligibility determination of a Wisconsin transfer pupil?

The receiving local educational agency must either adopt the evaluation and eligibility determination of the sending agency or complete a reevaluation of the pupil. If the receiving agency decides to reevaluate the pupil, it must do so consistent with §115.78(3), Wis. Stats., which establishes a 90-day time limit. The 90-day timeline begins when the pupil enrolls. The law permits extension of the 90-day time limit with the permission of the parent or, if the parent does not grant permission, the Department of Public Instruction. While the local educational agency evaluates the pupil, it must continue to provide the pupil special education services consistent with an IEP.

3. When a local educational agency receives a transfer pupil with a disability from another state, what general rules apply?

When a Wisconsin local educational agency receives a transfer pupil from another state, the receiving agency is not required immediately to implement the sending agency's IEP. However, the receiving agency must ensure that the rights of the pupil and the parents are not compromised. A child's right to education is established under Article X, Section 3, of the Wisconsin Constitution. Therefore, the agency must admit the pupil to school without delay. The agency must initially review the sending agency's evaluation and eligibility determination to determine whether the child has a disability under Wisconsin standards and the IDEA. If the evaluation and eligibility determination meet these standards, the receiving agency may adopt them.

4. What action must a receiving Wisconsin local educational agency take if it adopts the evaluation and eligibility determination of an out-of-state agency?

If the receiving agency adopts the out-of-state evaluation and eligibility determination, the receiving agency must either--

- adopt the sending agency's IEP for the pupil; or
- conduct a meeting to develop its own IEP.

If the receiving agency adopts the out-of-state evaluation and eligibility determination and IEP, the agency may begin special education services after providing proper notice to the parents and obtaining the parents' consent for the initial provision of special education in Wisconsin. If the receiving agency does not adopt the sending agency's IEP, the receiving agency must conduct a meeting to develop its own IEP without undue delay, but in no case later than 30 calendar days after the date that the agency adopted the sending agency's evaluation and eligibility determination. The department recommends meeting as soon as possible to ensure the pupil's rights are not compromised.

5. What action must a receiving Wisconsin local educational agency take if it does not adopt the evaluation and eligibility determination from the out-of-state agency?

If the receiving agency decides not to adopt the out-of-state evaluation and eligibility determination, it must conduct its own evaluation of the pupil. The evaluation is treated as an initial evaluation. The agency must complete its evaluation, and if the pupil is eligible, the agency must conduct a meeting to develop an IEP within 30 calendar days of the date of its eligibility determination. The agency must send a notice concerning the pupil's placement to the parents within 90 days of the date the pupil enrolled. While the law permits an agency to take up to 90 calendar days to complete this process, the department urges local educational agencies to complete it as soon as possible.

While the agency is evaluating the pupil, it is not required to provide the pupil special education services. [OSEP Memorandum 96-5, December 6, 1995] The agency may use special education staff to provide services that are agreed upon by the agency and the parents. However, the cost of such services, provided prior to a determination that the child is eligible for special education under Wisconsin standards, is not eligible for state special education categorical aid.

6. What process is required for adopting an evaluation and eligibility determination or an IEP of a transfer pupil?

The law does not prescribe the process for adopting the evaluation and eligibility determination or IEP of a transfer pupil. The method of adoption is left to local policy. The local educational agency must ensure that any evaluation and eligibility determination or IEP it adopts meets the requirements of state and federal law.

7. Must a local educational agency conduct an IEP team meeting for a transfer pupil with a disability prior to initiating special education services?

The receiving agency would not need to conduct an IEP team meeting if--

- a copy of the pupil's evaluation and IEP is available;
- the evaluation and eligibility determination and the IEP comply with state and federal law;
- the parents indicate that they are satisfied with the current IEP;
- the agency determines that the current IEP is appropriate; and
- the agency determines that the pupil's current IEP can be implemented as written and in the school that he or she would otherwise attend if not disabled.

8. What notification should the local educational agency provide to parents upon adopting a sending agency's IEP or evaluation and eligibility determination?

When a receiving agency formally adopts a sending agency's IEP, the agency must notify the parents of this decision. The receiving agency can meet this requirement by sending the parents a copy of the IEP and a notice of placement that meets the requirements of § 115.792(2), Wis. Stats. When the receiving agency adopts the sending agency's evaluation and eligibility determination, the receiving agency must notify the parents of this decision. The receiving agency can meet this requirement by sending the parents a written notice of the adoption that meets the requirements of § 115.792(2), Wis. Stats., and a copy of the evaluation report from the sending local educational agency.

9. If a pupil changes schools within a local educational agency for reasons unrelated to the pupil's IEP, must the agency conduct an IEP team meeting?

If a pupil changes schools because his or her residence changes to another attendance area within the local educational agency or if the pupil's program or school building closes, an IEP team meeting is not required if--

- the pupil's new school building is the building that he or she would otherwise attend if not disabled; and
- the pupil's IEP can be implemented as written in the new school building.

The local educational agency must notify the parents of its decision to implement the current IEP in the new school building. The agency may meet this obligation when a pupil changes schools by providing the parent a copy of the pupil's IEP and a notice of educational placement meeting the requirements of § 115.792(2), Wis. Stats. If the parents are not satisfied with the new school, they may request an IEP team meeting to address the issue.

If the agency determines that the IEP cannot be implemented as written in the new school that the pupil would otherwise attend if not disabled, the agency must immediately conduct an IEP team meeting to determine the child's placement and to ensure there is no interruption in services.

10. Must a receiving local educational agency provide a free appropriate public education to a transfer pupil who is currently under an expulsion from a local educational agency?

Yes. The Individuals with Disabilities Education Act guarantees all children with disabilities, including those expelled from school, a free appropriate public education. Therefore, a child with a disability who has been expelled from school must be provided services that are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving IEP goals. See Information Update Bulletin 00.02, Question 24.

Questions about this Information Update Bulletin may be directed to the Special Education Team at (608) 266-1781. This Information Update Bulletin may also be accessed through the Internet:
<http://www.dpi.state.wi.us/dpi/dlsea/een/bulindex.html>

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